

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
EXECUTIVE OFFICE OF THE PRESIDENT  
WASHINGTON, D.C.  
20508**

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**FOR IMMEDIATE RELEASE  
Monday, February 22, 1999**

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**WTO Appellate Body Affirms, Expands Findings that Japanese  
Testing Requirements Violate WTO Rules**

United States Trade Representative Charlene Barshefsky applauded a World Trade Organization Appellate Body report released today which upholds and expands initial panel findings against Japanese testing requirements for agricultural products. The dispute concerns access to the Japanese market for apples and several other products. The Appellate Body agreed with an earlier WTO dispute settlement panel that Japan's variety-by-variety quarantine testing requirements are scientifically unjustified.

Ambassador Barshefsky stated, "This case establishes the important principle that testing requirements are to be based on science, not speculation. Thinly-veiled protectionist measures are not acceptable. We are pleased that the Appellate Body affirmed this result and expanded it to cover four additional products. This will help our growers export more than \$50 million a year of apples and other products to Japan."

While the initial panel decision applied only to apples, cherries, walnuts and nectarines, the Appellate Body decision also covers plums, pears, apricots and quinces. The Appellate Body report should result in new market opportunities for U.S. producers of these crops. This is the third successful outcome for the United States in disputes against Japan at the WTO. The earlier cases related to discriminatory taxation policies (distilled spirits) and intellectual property (copyright protection for sound recordings).

**Background**

Japan is the only country in the world that now requires "varietal testing" of quarantine treatments of imported horticultural products for insect pests. Instead of testing once to see if a quarantine treatment like fumigation effectively eliminates pests on a species of product (such as apples), Japan has insisted that exporting countries repeat separate tests for each fruit and nut variety (for instance, Red Delicious, Jonagold or Gala apples). Testing for each variety requires a minimum of two years

and costs the United States Government and U.S. producers several hundred thousand dollars.

The United States challenged this requirement as inconsistent with the new Uruguay Round Agreement on the Application of Sanitary and Phytosanitary Measures. A WTO panel, after consulting independent scientific experts, agreed that there is no scientific reason for requiring re-testing for each variety. After both sides appealed, the Appellate Body affirmed the panel's central findings that Japan's varietal testing requirement is not supported by scientific evidence and is not transparent. The Appellate Body reversed one finding on the procedural ground that the U.S. had not argued for it before the panel. The panel decision applied only to apples, cherries, walnuts and nectarines; the Appellate Body decision also covers plums, pears, apricots and quinces.

Japan "liberalized" its trade for apples in 1971. However, since that time, Japanese government officials have repeatedly denied permission for the importation of U.S. apples, allegedly due to phytosanitary concerns. It was only in 1994 that the first apples were actually approved for import.

The Office of the United States Trade Representative worked closely during the WTO litigation with officials of the United States Department of Agriculture and other agencies to achieve this successful outcome.